80-445

No.

Supreme Court, U. S.
FILED
OCT 11 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

CHARLES E. LIGONS,
Petitioner,

vs.

BECHTEL POWER CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PATRICK M. ROBY
500 Merchants Nat'l Bank Bldg.
Cedar Rapids, Iowa 52406
(319) 365-9461
Counsel of Record

THOMAS M. COLLINS, JR.
500 Merchants Nat'l Bank Bldg.
Cedar Rapids, Iowa 52406
(319) 365-9461
of Counsel

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
Summary of Argument	1
Argument	1
Conclusion	6

TABLE OF AUTHORITIES

Cases:

Ambush v. Montgomery County Government, Etc., 620 F.2d 1048 (4th Cir. 1980)	5
Board of Trustees v. Sweeney, 439 U.S. 24 (1980)	2,3,5
Coleman v. Missouri Pacific Railway Company, 622 F.2d 408 (8th Cir. 1980)	5
Furnco Construction Corporation v. Waters, 438 U.S. 567 (1978)	3,5
Grant v. Bethelem Steel Corporation, 622 F.2d 43 (2nd Cir. 1980)	5
Lujan v. State of New Mexico Health & Social Services Dept., 624 F.2d 968 (10th Cir. 1980)	5
McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973)	2,3,5
Solo Cup Company v. Federal Insurance Company, 619 F.2d 1178 (7th Cir. 1980)	5

Sweeney v. Board of Trustees, 604 F.2d 106 (1st Cir. 1979) 5

Whiting v. Jackson State University, 616 F.2d 116 (5th Cir. 1980) 5

Worthy v. United States Steel Corporation, 616 F.2d 698 (3rd Cir. 1980) 5

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SUMMARY OF ARGUMENT

Petitioner has not demonstrated adequate reasons for the granting of a writ of certiorari. The Courts of Appeals are in harmony with this Court's pronouncements on the precise issue raised by petitioner and the Court of Appeals decision comported with this Court's prior decisions on the issue.

ARGUMENT

I. The Court of Appeals correctly affirmed the Trial Court's judgment in favor of Bechtel.

Ligons brought this case under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq., alleging

disparate treatment by Bechtel based on Ligons' race. After trial to the United States District Court for the Northern District of Iowa the Court found that Ligons had established a prima facie case of disparate treatment based on race but that Bechtel had rebutted the prima facie case by a preponderance of the evidence, proving that Ligons' lay-off by Bechtel was borne of business necessity and in furtherance of a legitimate reduction in force. The Court further found that Ligons had failed to establish by competent evidence that Bechtel's proffered justifications in rebuttal were pretextual, expressly finding that Ligons' evidence in this regard was insufficient.

On appeal to the Eighth Circuit, Ligons claimed that Bechtel failed to prove that race was not the motivating factor in the decision to lay him off. The Eighth Circuit properly pointed out that this is not part of the employer's burden in a Title VII case, citing **Board of Trustees** v. **Sweeney**, 439 U.S. 24 (1978).

This Court has previously explained the order and allocation of proof in a private non-class action challenging employment discrimination under Title VII. In **McDonnell Douglas Corporation** v. **Green**, 411 U.S. 792 (1973), this Court held:

> "The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications...
>
> The burden then must shift to the employer to articulate some legitimate, non-discriminatory reason for the employee's rejection. . .

> . . .[B]ut the inquiry must not end here. While Title VII does not, without more, compel rehiring of respondent, neither does it permit petitioner to use respondent's conduct as a pretext for the sort of discrimination prohibited by §703(a)(1). On remand, respondent must, as the Court of Appeals recognized, be afforded a fair opportunity to show that petitioner's stated reason for respondent's rejection was in fact pretext." 411 U.S., at 802-804.

In 1978 this Court, in **Furnco Construction Corporation** v. **Waters,** 438 U.S. 567 (1978) granted certiorari to consider questions regarding the nature of the evidence necessary to rebut a prima facie case under **McDonnell Douglas,** and held that the burden which shifts to the employer in a Title VII case is:

> ". . . merely that of proving that he based his employment decision on a legitimate consideration, and not an illegitimate one such as race. . . To dispel the adverse inference from a prima facie showing under McDonnell Douglas, the employer need only 'articulate some legitimate, non-discriminatory reason for the employee's rejection.' " 438 U.S., at 577-578, quoting **McDonnell Douglas Corporation** v. **Green,** 411 U.S., at 802.

Four months later this Court, in **Board of Trustee** v. **Sweeney,** 439 U.S. 24 (1978), explained that in **Furnco** it had made clear that there is a significant distinction between merely articulating some legitimate non-discriminatory reason and proving absence of discriminatory motive and that "the former will suffice to meet the employee's prima facie case of discrimination." 439 U.S., at 25.

Both the District Court and the Court of Appeals properly applied the law in this case. After finding Ligons had proved a prima facie case raising a rebuttable inference of discrimination, the Court went on to find that Bechtel clearly met the burden of producing the necessary evidence to dispel the inference of discrimination. The Court of Appeals specifically stated:

> "Our careful review of the record convinces us that the District Court findings are not clearly erroneous. Fed. R.Civ. P. 52(a)."

In this case Bechtel not only articulated non-discriminatory reasons for Ligons' lay-off but showed, by a preponderance of the evidence, that the decision was not racially motivated or otherwise discriminatory on the basis of race, but was based on valid non-discriminatory evaluations of Ligons' qualifications and was borne of business necessity in furtherance of a legitimate reduction in force.

The fact that neither the District Court nor the Court of Appeals was persuaded that Ligons had been the victim of illegal discrimination is not an error of law or abuse of discretion on the Court's part but rather a failure of proof on Ligons' part. This Petition for Certiorari, in essence, attacks the Court's findings of fact and the failure of the Court to find the facts as Ligons would like. It is clear that substantial evidence exists in the record to support the District Court's findings of fact, that the District Court properly applied the law and that the Court of Appeals correctly affirmed the District Court.

II. Petitioner has failed to demonstrate sufficient reason for granting a writ of certiorari.

The Supreme Court's review of a Circuit Court's decision is "not a matter of right but of judicial discretion. . . granted only when there are special and important reasons therefor." Rule 17.1, Rules of the Supreme Court of the United States. It is reserved for review of conflicts between decisions of the various courts of appeals; to settle important questions of federal law; or to correct decisions made in conflict with applicable decisions of this Court. See generally, Rule 17.1, Rules of the Supreme Court of the United States.

Ligons asserts in his Brief in support of the Petition that the lower Federal Courts are in disarray concerning the issue of the

nature of proof required on an employer's part in rebutting the prima facie case of discrimination established by an employee.

The Eighth Circuit Court of Appeals decision in this case does not in any way conflict with the decision of any other Federal Court of Appeals on the same matter. Nor does the decision conflict with the prior decisions of this Court on the issue.

This Court has repeatedly stated the burden an employer must bear in rebutting the prima facie case of discrimination in a Title VII case. See Brief Point I, *supra.* Not only has this Court decided the issue raised in Ligons' petition, but it has further clarified the meaning of its holding in two subsequent cases.

Ligons asserts that the lower Federal Courts (citing several District Court decisions) are in conflict on the issue and that the issue must be resolved by this Court. The Court's attention is directed to the following cases, all of which have applied the law concerning the defendant's burden of proof in Title VII actions as that law was established in the **McDonnell Douglas, Furnco** and **Sweeney** cases: **Sweeney** v. **Board of Trustees,** 604 F.2d 106 (1st Cir. 1979), **Grant** v. **Bethlehem Steel Corporation,** 622 F.2d 43 (2nd Cir. 1980), **Worthy** v. **United States Steel Corporation,** 616 F.2d 698 (3rd Cir. 1980), **Ambush** v. **Montgomery County Government, Etc.,** 620 F.2d 1048 (4th Cir. 1980), **Whiting** v. **Jackson State University,** 616 F.2d 116 (5th Cir. 1980), **Solo Cup Company** v. **Federal Insurance Company,** 619 F.2d 1178 (7th Cir. 1980), **Coleman** v. **Missouri-Pacific Railway Company,** 622 F.2d 408 (8th Cir. 1980), **Lujan** v. **State of New Mexico Health and Social Services Department,** 624 F.2d 968 (10th Cir. 1980).

Not only has the issue been addressed by this Court at least three times, but the Circuits are in harmony with each other and with this Court in their application of this Court's holding on the issue.

CONCLUSION

Ligons has not shown that sufficient reason exists for granting certiorari in this case and the petition should, therefore, be denied.

Respectfully Submitted,

PATRICK M. ROBY
500 Merchants Nat'l Bank Bldg.
Cedar Rapids, Iowa 52406
(319) 365-9461

Counsel of Record

THOMAS M. COLLINS, JR.
500 Merchants Nat'l Bank Bldg.
Cedar Rapids, Iowa 52406
(319) 365-9461

Of Counsel